

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7070 of 1996

with

SPECIAL CIVIL APPLICATION No 7071 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and
MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

CROMPTON GREAVES LTD.

Versus

STATE OF GUJARAT

Appearance:

Mr.G.S.Jetly, Sr.Advocate with
MR MANISH R BHATT and Shri Pradeep S.Jetly for Petitioners
Mr.P.G.Desai, GP for State
M/S MG DOSHIT & CO for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE B.C.PATEL and
MR.JUSTICE K.M.MEHTA

Date of decision: 18/11/1999

ORAL (COMMON) JUDGEMENT

(PER PATEL,J):

1. Both these petitions are disposed of by this common judgment as question involved in both the petitions is same.

2. So far as the facts are concerned, we have taken the facts from Special Civil Application no.7070/96.

3. In the present petition, the petitioner- M/s Crompton Greaves Ltd and another are challenging the notice of re-assessment issued under Section 44 of Gujarat Sales Act (hereinafter referred to as "the Act") dated July 20, 1996 issued by the Sales Tax Officer (II), Ahmedabad for assessment year 1991-92 (and 1992-93) on the ground that deductions with regard to sales made against certificate in Form 17A prescribed under Rule 24(2-A) of the Gujarat Sales Tax Rules, 1970 (hereinafter referred to as "the Rules") read with section 12(1) were erroneously allowed in the assessment made under section 41. In fact, grievance is made by the petitioners that they have neither made any sale on the strength of certificate in Form 17A nor claimed any deduction during the assessment year 1991-92. Even the assessing officer had no occasion to allow such deductions.

BACKGROUND OF FACTS:

4. The petitioner No.1 is a company incorporated under the provisions of the Companies Act, 1956 and holds valid registration certificate under the provisions of Gujarat Sales Tax Act, 1969 as well as Central Sales Tax Act, 1956. The petitioner No.2 is the branch Accountant of the petitioner No.1-company.

5. The petitioners, inter alia, carry on the business of manufacture and sale of electrical goods falling under Item 26 of Schedule II attached to the Act. From the record it appears that on 9.2.1993 officers from the office of the Assistant Commissioner of Sales Tax, Enforcement Branch, visited the business premises of the petitioners, and passed an order under section 59(4)(5) of the Act. The books of accounts were seized, statement of Shri Vinayak B.Shenolikar, Branch Manager of the petitioner No.1-company was recorded. The Sales Tax Officer (IV), unit I issued a show cause notice on 26.2.1993 for obtaining clarification on certain points which has been produced at annexure "E1" at page 56. The petitioner through his advocate filed reply/explanation on 26.3.93 in response to the show cause notice. Petitioners have produced the said reply at annexure "F"

at page 64 to the petition. The Sales Tax Officer (IV), Unit-1 passed the order dated 25.2.1994 after going through the entire evidence on record including the show cause notice and the reply therein. Reading the order it appears that the Sales Tax Officer issued the show cause notice dated 26.2.1993 seeking explanation for some queries and later on restricted to four points to which the dealer explained in writing. The Sales Tax Officer found the same in accordance with law and hence accepted and finalised the assessment order on 25.2.1994 under Section 41(3) of the Act. The copy of the order is annexed to the petition at annexure "I".

PRESENT CONTROVERSY:

6. From the record it appears that thereafter on 16.2.1996, the Sales Tax Office conducted search of the petitioners' business premises and passed an order under Section 59 of the Act, seized the books of accounts and recorded the statement of the Branch Manager of the petitioner company. Thereafter on 20.7.96 notice for reassessment under Section 44 of the Gujarat Sales Tax Act, 1969 was issued. The petitioners have challenged the aforesaid show cause notice in the present petition on various grounds mentioned in the petition

STATUTE BACKGROUND:

7. However, before we appreciate the said contentions it will be useful to refer to certain provisions of the Act in this behalf. The Gujarat Sales Tax Act, 1969 (Act 1 of 70) is a law relating to the levy of a tax on the sale or purchase of certain goods in the State of Gujarat. Section 2(10) provides definition of "dealer" and Section 2(28) provides definition of "sales" which means sales of goods made within the State. Under section 2(14) "licence" means a licence granted under section 31 or as the case may be. Under section 2(25) "registered dealer" means a dealer registered under Section 29. Expression "tax" is defined under section 2(32) of the Act to mean a sales tax, general sales tax, turnover tax or purchase tax payable under the Act. Section 3 of the Act which is a charging section provides for levy of tax on the turnover of sales and turnover of purchase. Section 7 of the Act provides for levy of sales tax on the goods in Schedule II Part A. Section 8 provides for levy of general sales tax on goods in Schedule II, Part-B. Section 12 of the Act provides where a dealer liable to pay tax under the Act sells any taxable goods, to a licenced dealer who certifies in the prescribed form. and for a tax payable at a reduced rate on certain sales. Section 13 of the Act provides,

interalia, that there shall not be deduction from turnover of sales, sales of goods to a licenced dealer as provided in section 7 or 8 unless the licenced dealer certifies in the prescribed form that the goods are purchased for resale in the course of inter-state trade or commerce and that the goods will be resold within 12 months from the date of such purchase or by another dealer to whom he resells the goods. Both sections provide, interalia, for deduction from the turnover sale to Licenced Dealer provided such licenced dealer furnishes in the circumstances and subject to the conditions specified in Section 13 a certificate as provided therein. Section 41 of the Act provides for assessment of tax and Section 44 provides for reassessment of turnover escaping assessment which reads as under:

"Sec.44 Reassessment of Turnover escaping assessment:

"If the Commissioner has reason to believe that any turnover of sales or turnover of specified sales or turnover of purchase of any goods chargeable to tax under this Act has escaped assessment or has been under-assessed or assessed at a lower rate in respect of any period in an order of assessment under section 41.

or if the Commissioner has reason to believe that any deduction has been wrongly given or any draw back, set off or refund has been wrongly granted in any order of assessment so made, then the Commissioner may--

(a) where he has reason to believe that the dealer has concealed such sales or specified sales or purchases or any material particulars relating thereto, or has knowingly furnished incorrect declarations or returns, at any time within eight years, and

(b) in any other case, at any time within five years,

of the end of the period to which such turnover relates, serve on the dealer liable to pay tax in respect of such turnover, a notice containing all or any of the requisitions which may be included in a notice in the prescribed manner and assess,

not later than three years from the date of service of the notice, the amount of tax due from such dealer to the best of his judgment"

Section 86 provides for power to make Rules. In exercise of said powers the State of Gujarat prescribed rules which are called Gujarat Sales Tax Rules, 1970. Rule 24 provides for form of certificate under sections 4, 12, 13 and other sections. Rule 24(2)(A) provides for a certificate to be issued by a licenced dealer purchasing goods for the purpose of clause (aa) of Gujarat Sales Tax Act. Said Section 24(2A) reads as under:

"A certificate for the purpose of clause (a) and (b) of subsection (1) of section 12 shall be in Form 17-A."

Form 17A is prescribed by the State Government. That is a certificate to be issued by a licenced dealer purchasing goods for the purpose of clause a(i) of subsection 1 of section 12 of the Act. Reading the certificate it appears that the certificate is to be furnished in triplicate wherein the purchaser has to indicate his licence number with date along with the date of certificate issued under the Act and has also to state that the licence was in force at the time of purchase. The purchaser has to certify that the goods purchased under the invoice will be resold within 12 months from the date of purchase in the course of interstate trade or commerce. The certificate is to be issued as prescribed under Rule 24. It is also clear that the Commissioner of Sales Tax is empowered to issue a licence under section 31 of the Act and the person in whose favour the licences are issued are getting the registration as well as licence number. While submitting Form 17A the person purchasing the goods has to mention his licence number as well as registration number given by the Commissioner of Sales Tax.

CONTENTIONS OF PARTIES:

8. The learned counsel for petitioner submitted that in the instant case it is not disputed that at the time when the assessment order was made, the purchasers were holding licences under Rule 24 of the Rule read with Section 31 of the Act and they submitted Form 17A to the petitioner. Thus, the department was aware about the fact that the party in whose favour the licences were issued were in existence.

9. The learned counsel for the petitioner submitted that from reading section 44 of the Act it is evident that before assuming the jurisdiction there are certain conditions precedent which require to be satisfied. The said conditions are:--

- i) Respondent No.3 must have reason to believe
- ii) that any turnover of sales of goods chargeable to tax under the "said Act" have escaped assessment.
- (iii) or has been under-assessed or assessed at lower rate.
- (iv) or that any deduction has been wrongly given.
- (v) or any drawback, set off or refund has been wrongly granted in the order of assessment.

10. In the petition as well as at the time of hearing the learned advocate for the petitioner contended that the notice for reassessment dated 20.7.96 issued under section 44 of the Act for the assessment years 1991-92 and 1992-93 was without jurisdiction and was not in proper exercise of jurisdiction and the petitioners having effected the sales that they have not claimed any Form 17 A nor claimed any deduction during the assessment year nor the assessing officer had any occasion to allow such deductions. It was therefore submitted that the impugned notice relates to alleged sales effected by the petitioner against Form 17A. It was the submission that they have made no sale on the strength of Form 17A for the assessment year 1991-92.

11. On behalf of respondents, Mr.D.B.Patel, Assistant Commissioner of Sales Tax (Enforcement) filed an affidavit in reply wherein it was stated that as regards the year 1991-92 though the petitioner has not claimed sales against Form 17A in the returns some claims were made in the course of assessment. He stated that the undermentioned claims are doubtful as they are not supported by evidence:

1991-92

Credit notes (for goods return, breakage,
price difference etc) Rs.32,88,975/-

Job work Rs.7,30,173/-

Section 49(1 Sales to canteen stores
department Rs.16,87,870/-

Labour charges ---

Sales in the course of inter-State trade ---

As per assessment Rs.20145197

claimed in return Rs.1623391/-

Rs.5707018/-

12. The petitioners have filed rejoinder to said affidavit in reply and stated that in the case of Mohinder Singh vs Chief Election Commissioner in AIR 1978 SC 851 the Supreme Court held that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and can not be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. It was therefore submitted that it was improper for the respondent to make an attempt to sustain the impugned notice on additional grounds not mentioned in the reassessment notice. In the rejoinder it was further stated that all these claims were not made in the return but were made only at the time of assessment. It was stated that all these claims were examined by the assessing officer during the course of assessment proceedings. In respect of claims towards credit notes and detailed notes showing the break up of credit notes was submitted. A compilation of statement which was produced before the assessing officer during the course of assessment is produced at Exh.1 to the rejoinder. It was stated that in the original notice only advertance is towards Form 17A sales whereas in the affidavit reply scope for issuance of impugned notice is enlarged. It was further submitted that the affidavit-in-reply does not disclose any scope to issue impugned notice and therefore it deserves to be quashed and set aside .

13. Mr.P.G.Desai, Learned Government Pleader along with Mr.M.GDoshit on behalf of respondents, on the other hand, submitted that when there is a case of escapement and that too due to failure of disclosure of material facts, it is not necessary to give notice with all details. Reliance is placed on the decision of the Supreme Court in the case of INCOME TAX OFFICER, CUTTACK & ORS vs SHRI BIJU PATNAIK reported in AIR 1991 SC 464. In that case to re-open the assessment under Sections 147(a) and 148 of the Income Tax Act the Income Tax Officer obtained approval of the Commissioners of Income Tax, Cuttack, Bihar and Calcutta. The question was whether the notice should disclose the satisfaction of requirement of Section 147(a) or not, and if from the

record and the averments in the counter-affidavit it is clear that the Income Tax Officer has applied his mind to the facts of the case and after prima facie satisfying himself of the existence of those two conditions precedent reached the conclusion to reopen the assessment, would the notice, per se, become illegal? The Apex Court held that it is settled law that in an administrative action, though the order does not ex-facie disclose the satisfaction by the officer of the necessary facts, but if the record discloses the same, the notice or order does not, per se, become illegal. It was submitted that the same action relates to alleged sales against Form 17-A.

CONCLUSIONS:

14. In our opinion, Section 44 uses the words "if the Commissioner has reason to believe" . These words suggest that belief must be that of an honest and reasonable person based upon reasonable grounds, and that the Commissioner may act under this section on direct or circumstantial evidence not on mere suspicion, gossip or rumour. The powers under present section are wide but they are not plenary; the words of the section are "reason to believe" and not "reason to suspect".

15. In our opinion, in the instant case, after examining the material and after raid was carried out the Assessing Officer has assessed the assessee and passed reasoned order. According to the Assistant Commissioner the case was required to be reopened on the grounds stated in the notice which we have indicated earlier. The assessee was called upon to remain present with the proof to show as to why its claim of turnover against Form 17A for the Assessment Year should not be disallowed. In fact, the assessee never invoked form 17-A and the Assessing Officer did not grant benefit on the strength of Form 17A and the said fact has been admitted by the deponent on behalf of respondents. Thus, in our opinion, the grounds stated in the show cause notice for reopening the assessment must be held to be bad, illegal and must be quashed. In our opinion, conditions precedent for issuance of show cause notice for reopening the assessment do not exist, so notice must be held to be bad, illegal and must be quashed and accordingly quashed.

16. We dispose of these petitions only on the short ground and therefore we do not enter into other aspects of the matter. Both the petitions, accordingly, are allowed with costs.

